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**FIRST GENERAL COUNSEL'S REPORT**

MUR 6576

COMPLAINT RECEIVED: 05/16/2012

NOTIFICATION DATE: 05/22/2012

RESPONSES RECEIVED: 06/06/2012,  
06/07/2012, 06/18/2012, 06/29/2012, 12/18/2012,  
03/19/2013

DATE ACTIVATED: 09/04/12

DATE DEACTIVATED: 12/13/12

DATE REACTIVATED: 03/21/13

ELECTION CYCLE: 2012

EXPIRATION OF SOL: (earliest) 01/01/2017  
(latest) 04/15/2017

**COMPLAINANT:**

Scott W. Paradise

**RESPONDENTS:**

Wright McLeod for Congress and Cameron Nixon  
in his official capacity as treasurer

James M. Hull

Bernard S. Dunstan, Jr.

Barry L. Storey, president of Barry L. Storey

Family Investments LLLP

Margaret D. Dunstan, trustee to the J.R. Dunstan

Family LLC, as successor to J. Richard Dunstan

RGC Consulting, LLC

**RELEVANT STATUTES  
AND REGULATIONS:**

2 U.S.C. § 434(b)

2 U.S.C. § 438(a)(4)

2 U.S.C. § 441a

2 U.S.C. § 441b(a)

11 C.F.R. § 104.15(a)

11 C.F.R. § 104.3

11 C.F.R. § 104.9

11 C.F.R. § 110.1(e)

11 C.F.R. § 110.1(g)

**INTERNAL REPORTS CHECKED:**

FEC Database

**FEDERAL AGENCIES CHECKED:**

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**I. INTRODUCTION**

Wright McLeod was a Republican candidate for Georgia's 12th congressional district in 2012. His principal campaign committee is Wright McLeod for Congress ("McLeod Committee") and Cameron Nixon is its treasurer. The Complaint alleges that the McLeod Committee violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations by:

- using proprietary donor information obtained from Commission disclosure reports filed by Rick W. Allen for Congress to solicit funds in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a);
- accepting excessive in-kind contributions through its use of office space provided at less than the usual and normal charge in violation of 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f);
- failing to properly report excessive in-kind contributions of office space in violation of 2 U.S.C. § 434(b)(3)(A);
- accepting contributions from a limited liability corporation in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 110.1(g); and
- failing to properly disclose various in-kind contributions, payroll expenditures, and staff reimbursement expenditures in violation of 2 U.S.C. § 434(b)(3)(A), (b)(4).

The Complaint also alleges that four individual respondents — Bernard S. Dunstan, Jr., Margaret D. Dunstan (trustee and member manager of J.R. Dunstan Family LLC), Barry L. Storey (president and general equity partner of Barry Storey Family Investments, LLLP), and James M. Hull — made excessive in-kind contributions to the McLeod Committee by contributing office space at less than fair market value. All respondents deny the allegations.

As detailed below, we recommend that the Commission find no reason to believe (1) that the McLeod Committee or its vendor, RGC Consulting, LLC, violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a) by soliciting donors with information from Commission reports; (2) that

1 the McLeod Committee or J.R. Dunstan Family LLC violated 2 U.S.C. § 441b(a) by making or  
2 receiving corporate contributions; or (3) that any respondent violated 2 U.S.C. §§ 441a(a)(1)(A)  
3 or 441a(f) by making or receiving excessive in-kind contributions.

4 We further recommend that the Commission exercise prosecutorial discretion and dismiss  
5 the following potential violations: (1) that the McLeod Committee violated 2 U.S.C.  
6 § 434(b)(3)(A) and 11 C.F.R. § 110.1(e) by failing to properly report contributions made by  
7 Barry L. Storey Family Investments, LLLP; (2) that the McLeod Committee violated 2 U.S.C.  
8 § 434(b)(3)(A) and 11 C.F.R. §§ 104.3(b), 104.13 by failing to properly disclose in-kind  
9 contributions on its 2011 Year-End Report; (3) that the McLeod Committee violated 2 U.S.C.  
10 § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A), 104.9(a) by failing to properly disclose payroll  
11 expenditures on its April 2012 Quarterly Report; and (4) that the McLeod Committee violated  
12 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A), 104.9 by failing to properly disclose  
13 staff reimbursements on its April 2012 Quarterly Report.

## 14 II. FACTUAL AND LEGAL ANALYSIS

### 15 A. Alleged Misappropriation of Information From Reports to the Commission

16 The Complaint alleges that the McLeod Committee obtained contributor information  
17 from disclosure reports filed with the Commission by Rick W. Allen for Congress ("Allen  
18 Committee"), the principal campaign committee of one of McLeod's primary election  
19 opponents. Compl. at 1-2. The McLeod Committee allegedly used that information to solicit  
20 contributors in violation of 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a). *Id.*

21 In support of its claim, the Complaint states that two Allen Committee donors — Molly  
22 A. Hargather and Wyche Thomas Green — received fundraising mail from the McLeod  
23 Committee in March 2012. Compl. at 1-2, Ex. B. These two donors allegedly had no prior

1 contact with the McLeod Committee. *Id.* at 1. And, according to the Complaint, the solicitations  
2 used particular variations of Hargather's and Green's names and addresses that are (1) identical  
3 to those used in the Allen Committee's reports to the Commission, and (2) different from  
4 variations of the donors' names that appear in other public records. *Id.* at 1, Exs. A, B. As a  
5 result, the Complaint contends that the McLeod Committee must have obtained Hargather's and  
6 Green's names and addresses from the Allen Committee's disclosure reports. *Id.* at 1-2.

7 In response, the McLeod Committee states that it outsourced its direct mail solicitations  
8 to a third-party vendor and that it played no role in the development of its vendor's mailing lists.  
9 Committee Resp. at 5-6. The Committee also maintains that it has no information to suggest that  
10 its vendor obtained contributor contact information in violation of the Act or Commission  
11 regulations. *Id.*<sup>1</sup>

12 We provided the McLeod Committee an opportunity to clarify its Response on  
13 December 5, 2012. *See* Letter from Daniel Petalas, Assoc. Gen. Counsel, FEC, to Stephen  
14 Passantino, Counsel for McLeod Committee (Dec. 5, 2012). The McLeod Committee identified  
15 RGC Consulting, LLC ("RGC") as its third-party vendor. *See* Affidavit of Mike Allen on Behalf  
16 of Wright McLeod for Congress, Inc. at ¶ 3 (Dec. 14, 2012). We then notified RGC that it was a  
17 potential respondent and provided it an opportunity to respond to the Complaint. *See* Letter from  
18 Jeff S. Jordan, Supervisory Attorney, FEC, to Rebecca Grant Cummiskey, RGC Consulting,  
19 LLC (Jan. 7, 2013). In its response, RGC denies that it obtained any contributor information  
20 from Commission filings. RGC Consulting, LLC Response at 2 (Mar. 18, 2013) ("RGC Resp.").  
21 Instead, RGC explains that its owner, Rebecca Cummiskey, provided mailing lists for McLeod  
22 Committee that were derived exclusively from her personal database of 30,000 contacts. *Id.* at 1.

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<sup>1</sup> The McLeod Committee also argues that the variations of Hargather's and Green's names used in the solicitations are readily available through a wide range of public records. Committee Resp. at 6-7.

1 RGC states that over the last 12 years, Cummiskey has worked on numerous campaigns and as a  
2 political fundraiser. As a result, Cummiskey explains that she developed her database "largely  
3 from direct donations to [the] campaigns on which she has worked" and through "rolodexes,  
4 chamber of commerce directories, association membership directories" and other sources. *Id.*

5 We recommend that the Commission find that there is no reason to believe that either the  
6 McLeod Committee or RGC violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. §104.15(a). The  
7 Complaint is incorrect that the version of Green's name used in the McLeod Committee's  
8 solicitation (*see* Compl., Ex. B) is identical to that found in the Allen Committee reports.  
9 Although the Complaint attaches a chart purporting to show the iteration of Green's name used  
10 in an Allen Committee report (*see* Compl., Ex. A.), the actual Allen Committee reports use a  
11 different version of Green's name. In three instances, the Allen Committee has reported Green's  
12 name as: "Mr. Wyche Thomas Green III." *See* Rick W. Allen for Congress, FEC Form 3, 2012  
13 July Quarterly Report at 28-29 (Jul. 15, 2012); Rick W. Allen for Congress, FEC Form 3, 2011  
14 Year-End Report at 32 (Jan. 31, 2012). In contrast, the version of Green's name in the McLeod  
15 solicitations contains a comma after Green's last name: "Mr. Wyche Thomas Green, III."  
16 (Compl, Ex. B.)

17 The version of Hargather's name and address appearing in the McLeod Committee  
18 solicitation (Compl., Ex. B) is identical to that appearing in the relevant Allen Committee report,  
19 *see* Rick W. Allen for Congress, FEC Form 3, 2011 Year-End Report at 34 (Jan. 31, 2012). This  
20 isolated instance, however, is insufficient to support a reason to believe finding, even crediting  
21 the Complaint's assertions that this iteration of Hargather's name appears nowhere else in the

1 public record,<sup>2</sup> and that Hargather has never contributed to a political candidate other than Allen.  
2 *See* Compl. at 1. This is particularly true in light of RGC's credible and reasonable explanation  
3 of how it obtained the names and addresses it used for the McLeod campaign's solicitations,  
4 which includes sources other than donations made to other campaigns. RGC Resp. at 1-2.

5 Accordingly, we recommend that the Commission find that there is no reason to believe  
6 that the McLeod Committee or RGC violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a).

7 **B. Alleged Prohibited and Excessive In-Kind Contributions**

8 1. **Alleged Prohibited Contribution Under 2 U.S.C. § 441b(a)**

9 The Complaint and the responses show that the McLeod Committee rented office space  
10 for its campaign headquarters at 3632 Wheeler Road in Augusta, Georgia. *See, e.g.,* Compl. at 2;  
11 James Hull Resp. at 1 (May 5, 2012) ("First Hull Resp."). The Complaint alleges that the  
12 McLeod Committee reported to the Commission in-kind contributions of \$250 for "rent" in  
13 January, February, and March 2012 from four individuals — Bernard Dunstan, Margaret  
14 Dunstan, Hull, and Storey. Compl. at 2, Ex. C. The Complaint also claims that public records  
15 show that the office space is owned by a limited liability company ("LLC"), and asks the  
16 Commission to determine whether the use of the office space was donated by the individuals or  
17 the LLC. Compl. at 2.

18 In response to this allegation, Respondents represent that just one of the four owners of  
19 the property is an LLC. First Hull Resp. at 2, ¶ 2, Attachments.<sup>3</sup> Margaret Dunstan's share of  
20 the property is held by J.R. Dunstan Family LLC, which is one of the four tenants-in-common

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<sup>2</sup> We conducted a search of publicly available websites, sources, and records (including Facebook, Twitter blogs, and a website that tracks contributors), and located various iterations of Hargather's name, but none identical to that used by the McLeod solicitation and the Allen Committee's report.

<sup>3</sup> The First Hull Response was subsequently adopted by respondents Barry L. Storey Family Investments, LLLP, Bernard Dunstan, and J.R. Dunstan Family LLC. *See* James M. Hull Resp. at 1 (Jun. 6, 2012).

1 that owns the building. *Id.* at 2, ¶ 2. Margaret Dunstan is “the member manager of the [LLC,  
2 who] is entitled to receive all rents from its assets.” *Id.* It therefore appears that the J.R. Dunstan  
3 Family LLC owns 25% of the office space, and not 100% as suggested by the Complaint.

4 In its April 2012 Quarterly Report, the McLeod Committee disclosed in-kind  
5 contributions of \$250 from Margaret Dunstan in January, February, and March of 2012. *See*  
6 April 2012 Quarterly Report. Given the Dunstan Family LLC’s ownership interest in the  
7 property, Margaret Dunstan’s reported contributions raise the issue of whether *the LLC* made  
8 prohibited corporate contributions to the McLeod Committee. Under the Act, corporations may  
9 not make contributions to federal candidates. 2 U.S.C. § 441b(a). An LLC is treated as a  
10 corporation for purposes of the contribution limits if it has publicly traded shares or if it elects to  
11 be treated as a corporation with the Internal Revenue Service (“IRS”) for federal tax purposes.  
12 *See* 11 C.F.R. § 110.1(g)(3). If, instead, an LLC elects to be treated as a partnership, or makes  
13 no election at all, then the LLC is treated as a partnership for purposes of the contribution limits.  
14 *Id.* § 110.1(g)(2). In that case, a contribution from an LLC is attributed to the LLC and to each  
15 of its “partners,” *id.* § 110.1(e), unless the LLC has only “a single natural person member,” in  
16 which case the contribution is attributable to just that person, *id.* § 110.1(g)(4); *see also*  
17 Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed.  
18 Reg. 37,397, 37,399 (Jul. 12, 1999) (explanation and justification for 11 C.F.R. § 110.1(g)).

19 The Complaint does not allege that the J.R. Dunstan Family LLC is publicly traded or has  
20 elected to be treated as a corporation by the IRS. The responses and our own research of public  
21 information do not indicate otherwise. Accordingly, we recommend that the Commission find

1 no reason to believe that the J.R. Dunstan Family LLC made, or that the McLeod Committee  
2 accepted, a prohibited corporate contribution in violation of 2 U.S.C. § 441b(a).<sup>4</sup>

3 2. Alleged Excessive In-Kind Contributions

4 The Complaint claims that the four in-kind contributions for rent that the McLeod  
5 Committee reported were made in violation of 2 U.S.C. § 441a(a)(1)(A). Compl. at 2. Section  
6 441a(a)(1)(A) prohibits a person from making a contribution — which includes a gift,  
7 subscription, loan, advance, or deposit of money or anything of value for the purpose of  
8 influencing a federal election — to a candidate or authorized political committee in any calendar  
9 year, which aggregates in excess of \$2,500.<sup>5</sup> 2 U.S.C. § 441a(a)(1); 11 C.F.R. § 100.52(a).  
10 “Anything of value” includes an in-kind contribution. 11 C.F.R. § 100.52(d)(1). If goods or  
11 services are provided at less than the usual and normal charge, the amount of the in-kind  
12 contribution is the difference between the usual and normal charge for the goods or services at  
13 the time of the contribution and the amount charged the political committee. *Id.*

14 The Complaint argues that the in-kind contributions were excessive because the monthly  
15 value of the office space occupied by the McLeod Committee is not \$1,000 but in excess of  
16 \$6,000. Compl. at 2. The Complaint asserts that the McLeod Committee occupies 6,674 square

<sup>4</sup> Because it appears that Margaret Dunstan is the sole member manager of the J.R. Dunstan Family LLC, the McLeod Committee was correct to report the in-kind contributions attributable to J.R. Dunstan Family LLC's share of the office space as having been made by Margaret Dunstan. See 11 C.F.R. § 110.1(g)(4). Additionally, as noted above, one of the other three owners of the office space is a limited liability limited partnership — Barry L. Storey Family Investments, LLLP, of which Barry L. Storey is the president. See First Hull Resp. at 2, ¶ 2; Second Hull Resp. at 1; see also Committee Resp. at 12 n.5. The Complaint does not allege that the LLLP made an excessive or prohibited contribution to the McLeod Committee, nor does it claim that the McLeod Committee misreported the in-kind contributions from Storey. See Compl., generally. But because the McLeod Committee failed to attribute Storey's in-kind contribution to the LLLP (and any of its other partners, if any) in addition to Storey, the McLeod Committee may have in fact violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e). Due to the relatively small amount of contributions involved (\$750), however, we further recommend that the Commission exercise its prosecutorial discretion and dismiss this potential violation.

<sup>5</sup> At the relevant time section 441a(a)(1)(A)'s limit stood at \$2,500. That limit has since been adjusted upward for inflation to \$2,600. See Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530-02, 8532 (Feb. 6, 2013).



1 feet of rental space, and that the average annual rental price for comparable office space in the  
2 same area is approximately \$11.50 per square-foot, which would make the fair market value of  
3 the campaign office space more than \$6,000 per month. *Id.* In support of its calculation of the  
4 property's fair market value, the Complaint provided listings of two available rental properties  
5 located on the same road as the McLeod Committee headquarters. *Id.*, Ex. B. The Complaint  
6 claims that the substantial difference between what the McLeod Committee reported and alleged  
7 fair market value would amount to the making and receiving of excessive in-kind contributions.  
8 *Id.* at 2.

9 The Respondents, however, convincingly contest the Complainant's valuation. They  
10 explain that it is improper to determine the usual and normal charge for the subject property  
11 based upon a sample size of two properties that are not comparable in terms of quality and that  
12 have been listed but not actually rented. Committee Resp. at 10; First Hull Resp. at 1.  
13 According to Respondents, the subject property has been vacant for a number of years and is  
14 currently in "poor condition" because of a "number of roof, HVAC, and flooring problems," all  
15 of which require "attention and repair prior to and during occupancy." Committee Resp. at 10;  
16 First Hull Resp. at 2, ¶¶ 3, 5. As a result, the space rented to the Committee is not comparable in  
17 terms of quality to the Complaint's cited sample properties, the Respondents argue. Committee  
18 Resp. at 10, Ex. 2; First Hull Resp. at 2-5. Further, the Respondents deny that the McLeod  
19 Committee is occupying the full 6,674 square feet as the Complaint alleged; rather they contend  
20 that the McLeod Committee occupies approximately 1,000 square feet of the space. Committee  
21 Resp. at 12; First Hull Resp. at 2, ¶ 4.

22 The Respondents also provided a detailed analysis of how the property owners  
23 determined that \$1,000 per month is a commercially reasonable rental value for the McLeod

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1 Committee's office space. See First Hull Resp. at 4-5; Committee Resp. at 12-13, Ex. 2 (Decl. of  
2 James Hull) at ¶¶ 5-14. The Respondents assert, supported by a sworn declaration, that the  
3 \$1,000 per month lease is commercially reasonable because: (1) the rental space is in poor  
4 condition; (2) the McLeod Committee repaired the office space at its own expense; (3) the  
5 McLeod Committee paid all utilities for the entire building; and (4) the McLeod Committee  
6 agreed to the owners' right to terminate its occupancy at any time.<sup>6</sup> Committee Resp. at 12-13,  
7 Ex. 2 at ¶¶ 5-14. The McLeod Committee has provided a declaration from one of the property  
8 owners, Hull, who states that he is an expert on the real estate market in Augusta, Georgia. See  
9 Committee Resp., Ex. 2. Hull says that he has firsthand knowledge of the condition of the  
10 property, the circumstances under which a portion of the property was leased to the Committee,  
11 and the decision to forgive the rental payments resulting in the in-kind contributions. *Id.* ¶ 4.

12 The property owners state that they agreed that they would not receive rent from the  
13 McLeod Committee, but instead would treat the \$1,000 monthly rental fee as an in-kind  
14 contribution, provided that the McLeod Committee did not otherwise default on the terms of the  
15 lease, and properly disclosed the unpaid rental payments as in-kind contributions. *Id.* ¶¶ 12, 13.  
16 In addition, the McLeod Committee provided with its Response a summary of the building repair  
17 expenses it incurred since it began occupancy of the rental office space, which amounts to  
18 \$3,290.68. Committee Resp., Ex. 3.

19 The Respondents' detailed explanation of why the usual and normal charge for rent for  
20 the property leased by the McLeod Committee is \$1,000 per month, and not in excess of \$6,000

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<sup>6</sup> The property owners state that they have used this same rental technique on many occasions with retail tenants in its shopping centers. *Id.* at 5. They further acknowledge the difficulty of obtaining from market comparables or sales a "paired sales" metric (e.g., comparing similar properties, one having a landlord termination right and the other not having such a termination right). *Id.* They contend, however, that having the unfettered right to terminate is of great benefit to the landlord and detriment to the tenant, and consequently should be reflected in any calculation of "market rent." *Id.*

1 per month as claimed by the Complaint, is convincing. The valuation method utilized appears to  
2 be commercially reasonable and is supported by a sworn declaration of a member of the  
3 ownership group, who facilitated the lease agreement with the McLeod Committee, and who has  
4 in excess of 35 years of real estate experience. Moreover, there is no information in this matter  
5 suggesting that a non-political committee would have had to pay more than the McLeod  
6 Committee did to lease the property in question. *Cf.* MUR 6040 (Rangel) (FGCR) (Cert.,  
7 02/24/10) and (Second GCR) (Cert., 10/18/11) (finding RTB where the information suggested  
8 the landlord offered less favorable terms to similarly situated non-political committee tenants).  
9 Therefore, we recommend that the Commission find no reason to believe that the property  
10 owners or any other respondent made, or that the McLeod Committee accepted, excessive in-  
11 kind contributions in the form of office rental space in violation of 2 U.S.C. §§ 441a(a)(1)(A) or  
12 441a(f).

13 **C. Alleged Reporting Violations**

14 Political committees are required to file disclosure reports with the Commission detailing,  
15 among other things, their cash on hand balance, receipts, and expenditures. 2 U.S.C. § 434(b);  
16 11 C.F.R. § 104.3. For authorized committees, such as the McLeod Committee, these reports  
17 must disclose the identity of each person (other than a political committee) who makes a  
18 contribution to the reporting committee whose contributions have an aggregate value in excess of  
19 \$200 within the election cycle, and must itemize all such contributions. 2 U.S.C. § 434(b)(3)(A);  
20 11 C.F.R. § 104.3(a)(4). Further, the regulations require that a committee disclose an in-kind  
21 contribution as if it were a monetary contribution *and* an operating expenditure (to avoid  
22 inflating its cash-on-hand) if it exceeds \$200 or aggregates over \$200 from the same individual  
23 during a particular election cycle. 11 C.F.R. § 104.13(a). For its expenditures, a committee must

1 provide clear and accurate information regarding the name and address of the payee, and the  
2 date, amount, and purpose of the expenditure. 11 C.F.R. §§ 104.3(b)(4), 104.9. The regulations  
3 also provide guidance on what level of description of purpose is adequate. *Id.*  
4 § 104.3(b)(4)(i)(A).

5 1. In-Kind Contributions

6 The Complaint alleges that the McLeod Committee's 2011 Year-End Report failed to  
7 provide adequate descriptions for five in-kind contributions. Compl. at 2, Ex. D. The McLeod  
8 Committee responds that it provided a brief statement or description of the contributions in  
9 conformance with 11 C.F.R. §§ 104.3(b), and 104.13.<sup>7</sup> Committee Resp. at 14-17. The McLeod  
10 Committee further asserts that although more detailed descriptions are not required, it is willing  
11 to amend its 2011 Year-End Report to provide more detail. *Id.* On July 3, 2012, the McLeod  
12 Committee filed an Amended 2011 Year-End Report that includes more detailed descriptions of  
13 the in-kind contributions. *See* Wright McLeod for Congress, Amended 2011 Year-End Report  
14 (Jul. 3, 2012). While the original descriptions simply stated "in-kind," the amended report  
15 contains more detail, such as "roof repair for HQ bldg," and "ceiling tile replacements." *Id.*  
16 at 19, 39.

17 The McLeod Committee's original descriptions of simply, "in-kind," in its 2011 Year-  
18 End Report were insufficient under 11 C.F.R. § 104.3(b)(4)(i)(A) (explaining that descriptions  
19 such as "expenses or "miscellaneous" are not enough). Given the nature of the violation,

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<sup>7</sup> The McLeod Committee's Compliance and Finance Director, Katie Stoddard, provided a declaration stating that its Year-End Report was prepared utilizing two separate computer programs — Microsoft Access and Aristotle 360 — and in migrating and reconciling data from the Committee's older Access database, she encountered various technical problems with the new program. Committee Resp. at 16, Ex. 6. Stoddard also claims to have had difficulty navigating Aristotle's features, which led her to inadvertently leave out more detailed descriptions of the in-kind contributions received by the McLeod Committee during this time period. *Id.* Further, the McLeod Committee notes that its description of the in-kind contributions on its 2011 Year-End Report raised no concerns from the Reports Analysis Division ("RAD") analysts. *Id.*

1 however, and the McLeod Committee's subsequent amendments of its 2011 Year-End Report,  
2 we recommend that the Commission exercise prosecutorial discretion and dismiss the allegation  
3 that the McLeod Committee violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 104.3(b) and  
4 104.13. *See Heckler v. Chaney*, 420 U.S. 851 (1985).

5                   2.     Payroll Expenditures

6             Complainant contends that the McLeod Committee's April 2012 Quarterly Report failed  
7 to itemize the recipients of six payroll expenditures and omitted payments for payroll taxes,  
8 processing fees, and other associated expenses. Compl. at 2, Ex. E. RAD sent the Committee an  
9 RFAI seeking clarification as to these payroll disbursements. *See* Committee RFAI (Jun. 18,  
10 2012). RAD advised the McLeod Committee that, when itemizing disbursements to entities for  
11 payroll services aggregating in excess of \$200 for an election cycle, memo entries are required,  
12 including the name and address of the individual receiving the salary, and the date, amount, and  
13 purpose of the payroll disbursements. *Id.*

14             Thereafter, the Committee filed three amendments to the April 2012 Quarterly Report,  
15 which provided the memo entries and other clarifying information regarding the payroll  
16 recipients. *See* Amended April 2012 Quarterly Reports of Receipts and Disbursements (July 3,  
17 6, and 11, 2012).<sup>8</sup> In comparing the three amendments to the original report, the McLeod  
18 Committee provided more detailed memo entries for the payroll disbursements. It also separated  
19 out a single \$8,727 disbursement made to Wright McLeod for Congress payroll on January 23,  
20 2012, into four different disbursements made by the Committee to three individuals (Nahali

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<sup>8</sup> The McLeod Committee noted in its Response that it discovered that an unrelated disbursement entry totaling \$6,000, dated January 11, 2012, on the same report did not include a memo entry describing the nature of the disbursement. Committee Resp. at 19 n.7. The McLeod Committee alleges that the nature of the disbursement can be determined from the name of the recipient, and states that the omission was a technical one, which would be corrected in its amendment. *Id.* We have reviewed the McLeod Committee's amendments for the April 2012 Quarterly Report and a memo entry with respect to this particular disbursement has been provided.

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1 Croft (\$2,727); Ryan Reynolds (\$250); Michael Allen (\$1,250)), and one entity (RGC  
2 Consulting (\$4,000)).<sup>9</sup> We consulted with RAD regarding the RFAI and subsequent  
3 amendments for the payroll disbursements and RAD informs us that the information provided in  
4 the amendments was sufficient to address the concerns set forth in the RFAI.

5 Based on the available information, it appears that the McLeod Committee has violated  
6 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A) and 104.9(a) by failing to provide a  
7 purpose or brief description or statement for one of its payroll expenditures and for failing to  
8 provide memo entries for payroll disbursements that included the names and addresses of  
9 individuals receiving the salary, and the date, amount, and purpose of the particular  
10 disbursements. Given the nature of the violation and the McLeod Committee's subsequent  
11 amendments to its April 2012 Quarterly Report, however, we recommend that the Commission  
12 exercise prosecutorial discretion and dismiss the allegation.

13 3. Staff Reimbursements<sup>10</sup>

14 The Complaint alleges that the McLeod Committee's April 2012 Quarterly Report does  
15 not specifically identify numerous disbursements as reimbursements nor does it identify the  
16 underlying recipients who may exceed the itemization threshold. Compl. at 2, Ex. F. The

<sup>9</sup> The McLeod Committee, in its April 2012 Quarterly Report, did not provide the names of the individuals or entities receiving the disbursements, but rather identified "Wright-McLeod for Congress Payroll" as the recipients. See April 2012 Quarterly Report. In addition, the Committee originally reported the memo entries for these particular disbursements primarily as "payroll," but later amended the memo entries to more detailed descriptions such as "media consulting fees," "strategic political/consulting," and "fundraising consulting fees" on the amended reports. *Id.*; Amended April 2012 Quarterly Reports.

<sup>10</sup> Pursuant to Directive 69, the Office of Compliance and the Office of General Counsel have sought legal guidance from the Commission regarding itemization of ultimate payee on committee disbursements because the existing guidance is unclear. See LRA #912 (Oct. 12, 2012). The Commission, at the December 20, 2012, open session, discussed the matter and decided to address these issues within the context of a policy statement in order to seek comments from the public. On January 31, 2013, the Commission made public a draft interpretive rule on the issue and invited public comment by March 4, 2013. See Agenda Document No. 13-03 (Jan. 31, 2013), available at [http://www.fec.gov/law/ultimate\\_payee.pdf](http://www.fec.gov/law/ultimate_payee.pdf). To date, the Commission has not issued a final policy statement on the matter.

1 McLeod Committee responds that neither the Act nor the regulations require further itemization  
2 with additional memo entries detailing the nature of the end-user transactions. Committee Resp.  
3 at 20, 23. Despite its position, the McLeod Committee indicated its intent to voluntarily amend  
4 both reports to include the end-user reimbursement payments made to McLeod Committee staff  
5 and include the word "reimbursement" to allay any concerns. *Id.* at 24.

6 RAD sent the McLeod Committee an RFAI seeking clarification regarding its failure to  
7 itemize. *See* Committee RFAI (June 18, 2012). It requested that the Committee amend its report  
8 to include memo entries detailing the names and addresses of the original vendor, and the date,  
9 amount, and purpose of the original purchase. *Id.* Thereafter, the McLeod Committee amended  
10 its April 2012 Quarterly Report to include this additional information and RAD informs us that  
11 the amendments have sufficiently addressed its concerns.<sup>11</sup> *See* Amended April 2012 Quarterly  
12 Reports (July 3, 6, and 11, 2012).

13 The Commission regulations require committees to provide further itemization of  
14 reimbursement expenditures with additional memo entries detailing the nature of the  
15 transactions. Thus, the McLeod Committee's failure to do so violates 2 U.S.C. § 434(b)(4) and  
16 11 C.F.R. §§ 104.3(b)(4)(i)(A) and 104.9. Nonetheless, we recommend that the Commission  
17 exercise its prosecutorial discretion and dismiss the allegation based on the nature of the  
18 violation, the relatively low dollar amount involved, and the McLeod Committee's amendments  
19 to its April 2012 Quarterly Report. *See Heckler v. Chaney*, 420 U.S. 851 (1985).

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<sup>11</sup> The Committee's revisions to these particular disbursements were made in its July 3, 2012, amendment. *See* Amended April 2012 Quarterly Report. The Committee amended its memo entries to reflect that the disbursements were, in fact, reimbursements for items such as paint, office supplies, and lodging expenses.

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**III. RECOMMENDATIONS**

1. Find no reason to believe that Wright McLeod for Congress and Cameron Nixon in his official capacity as treasurer and RGC Consulting, LLC violated 2 U.S.C. § 438(a)(4) and 11 C.F.R. § 104.15(a).
2. Find no reason to believe that the J.R. Dunstan Family LLC and Wright McLeod for Congress and Cameron Nixon in his official capacity as treasurer violated 2 U.S.C. § 441b(a) by making and accepting prohibited in-kind corporate contributions.
3. Find no reason to believe that Bernard S. Dunstan, Jr., Margaret D. Dunstan, J.R. Dunstan Family LLC, James M. Hull, Barry L. Storey, or Barry Storey Family Investments, LLLP made, or that Wright McLeod for Congress and Cameron Nixon in his official capacity as treasurer accepted, excessive in-kind contributions in violation of 2 U.S.C. §§ 441a(a)(1)(A) or 441a(f).
4. Exercise prosecutorial discretion and dismiss the potential violation of 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. § 110.1(e) by Wright McLeod for Congress and Cameron Nixon in his official capacity as treasurer for failing to properly report contributions made by Barry L. Storey Family Investments, LLLP.
5. Exercise prosecutorial discretion and dismiss the allegation that Wright McLeod for Congress and Cameron Nixon in his official capacity as treasurer violated 2 U.S.C. § 434(b)(3)(A) and 11 C.F.R. §§ 104.3(b), 104.13 by failing to properly disclose in-kind contributions on its 2011 Year-End Report.
6. Exercise prosecutorial discretion and dismiss the allegation that Wright McLeod for Congress and Cameron Nixon in his official capacity as treasurer violated 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A), 104.9(a) by failing to properly disclose payroll expenditures on its April 2012 Quarterly Report.
7. Exercise prosecutorial discretion and dismiss the allegation that Wright McLeod for Congress Committee and Cameron Nixon in his official capacity as treasurer violated 2 U.S.C. § 434(b)(4) and 11 C.F.R. §§ 104.3(b)(4)(i)(A), 104.9 by failing to properly disclose staff reimbursements on its April 2012 Quarterly Report.
8. Approve the Factual and Legal Analyses.
9. Approve the appropriate letters.
10. Close the file.



MUR 6576 (McLeod, et al.)  
First General Counsel's Report

05/15/13  
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